

would be to carry it much beyond the meaning of those who passed it.

It seems two judgments were rendered against Wm. S. Green on the 17th of April, 1837, one at the suit of the state, the other at suit of Nicholas J. Watkins. They were rendered on cases filed and docketed by consent, that of the state, however, standing first upon the docket. The question submitted is, how are these judgments to be paid? Shall they come in and be paid *pari passu*, or is the state entitled to priority in payment, assuming that the parties, in virtue of their judgments, stand in *equali jure*, which they do if the judgments are to be regarded as cotemporaneous.

Now, I take it to be well settled that the state, by the common law, is entitled to such priority, and that whenever she and a citizen have claims in equal degree, and a conflict arises by death or the act of the party not leaving enough to pay his debts, the claim of the citizen must yield to the right of the state. 2 H. & McH., 198; 3 H. & McH., 171; 1 H. & J., 417. This principle was affirmed by the late chief justice of the Court of Appeals, in the elaborate and able opinion delivered by him in the case of *The State vs. The Bank of Maryland*, 6 Gill & Johns., 205, 226. It was said in that case, "that the priority of the state is a rule only in the distribution of the property of the debtor, requiring the debt due to the state to be paid first where the individual creditor has no antecedent lien overreaching it." The state, then, is entitled to her priority, unless there is an antecedent lien, and here there is none. I am of opinion, therefore, that the judgment of the state of April term, 1837, is entitled to a priority over that of Nicholas J. Watkins, rendered at the same term.

Ordered, that the case be, and the same is hereby referred to the Auditor, with directions to state a further account in which the Farmers Bank of Maryland shall be credited with such sum of the proceeds of the mortgaged real estate as may, according to the tables, be an equivalent for the contingent dower interest of Mrs. Matilda E. Green, the widow of William S. Green, she having relinquished her dower to said bank.